International Longshoremen's Association, AFL–CIO *and* Coastal Stevedoring Company *and* Canaveral Port Authority *and* Port Canaveral Stevedoring, Inc., Patrick T. Lee, W. T. Cox, Jr., Mather Ward, George Scheidler, and Ben Pekin Family Partnership d/b/a Port Canaveral Stevedoring Limited. Cases 12–CC–1226, 12–CC–1227–1, and 12–CC–1227–2

November 24, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

This case poses the question whether the Respondent is responsible, under Section 8(b)(4)(ii)(B), for threats made in Japan by Japanese Unions to neutral persons (exporters, shippers, and importers) who are involved in the Florida-Japan citrus trade. Also raised is the issue of whether the Board has jurisdiction in this case.

The threats were that citrus would not be unloaded in Japan if these neutral persons continued to do business with nonunion stevedoring companies in the United States. The Respondent has a primary dispute with these nonunion companies.

We conclude that the Respondent is responsible for the conduct of the Japanese Unions, and that the Board has jurisdiction in this case. We hold that the Respondent has violated Section 8(b)(4)(ii)(B) as alleged.[1]

On November 21, 1991, the General Counsel, the Respondent, and the Charging Parties filed a stipulation of facts and a joint motion to transfer proceedings directly to the Board. The parties waived a hearing and the issuance of a decision by an administrative law judge and indicated their desire to submit the case directly to the Board for findings of fact, conclusions of law, and a decision. The parties also agreed that the charges, complaints, answers to complaints, and the stipulation of facts would constitute the entire record before the Board.

On January 27, 1992, the Board issued an order granting the parties' motion, approving the stipulation, and transferring the proceedings to the Board. Thereafter, the General Counsel,[2] the Charging Parties, and the Respondent filed briefs. The National Association of Manufacturers filed a brief as an amicus curiae.

On October 26, 1993, the Board heard oral argument in this case.

On the entire record and the briefs, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Coastal, a Florida corporation with an office and place of business in Ft. Pierce, Florida, is engaged in business as a stevedoring company. During 1990, Coastal performed stevedoring services valued in excess of $50,000 for shipping companies sailing in intercoastal or international waters, which shipping companies annually have a gross volume of business in excess of $500,000. Indian River Citrus Sales, Inc. (IRCS), a Florida corporation with an office and place of business in Wabasso, Florida, is engaged in the business of exporting citrus fruit. During 1990, IRCS sold and shipped from points located in Florida citrus fruit valued in excess of $50,000 directly to points located outside the State of Florida. Canaveral is owned by general partner Port Canaveral Stevedoring, Inc., and limited partners Patrick T. Lee, W. T. Cox Jr., Mather Ward, George Scheidler, and the Ben Pekin Family partnership, doing business as and trading under the name of ''Port Canaveral Stevedoring Limited.'' Canaveral maintains an office and place of business at Port Canaveral, Florida, and is engaged in business as a stevedoring company. During 1990, Canaveral performed stevedoring services valued in excess of $50,000 for shipping companies sailing in intercoastal or international waters, which shipping companies annually have a gross volume of business in excess of $500,000. We find that Coastal, IRCS, and Canaveral are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We also find

[1] Upon charges filed by Coastal Stevedoring Company (Coastal) on November 27, 1990 (Coastal filed an amended charge on June 3, 1991); by Canaveral Port Authority on November 20, 1990; and by Port Canaveral Stevedoring, Inc., Patrick T. Lee, W.T. Cox, Jr., Mather Ward, George Scheidler, and Ben Pekin Family Partnership d/b/a Port Canaveral Stevedoring Limited (Canaveral) on December 5, 1990, the General Counsel of the National Labor Relations Board issued an order consolidating cases, and a consolidated amended complaint and notice of hearing on July 23, 1991. The complaint alleges that the Respondent and the National Council of Dockworkers Unions of Japan, the Japanese Labor Union Association, and the Japan Seaman's Union (Japanese Unions), have been parties to a common plan, scheme, and/or joint venture having the object of forcing neutrals to cease doing business with Coastal, Canaveral, and other nonunion stevedoring companies and/or to alter their business relationships concerning the shipment of citrus fruit from Ft. Pierce and Port Canaveral, Florida, to Japan. The complaint further alleges that the Respondent has violated Sec. 8(b)(4)(ii)(B) of the Act through the conduct of the Japanese Unions which threatened economic harm to neutrals unless the job of loading citrus fruit onto vessels in Florida was performed by union labor. The Respondent filed a timely answer admitting in part and denying in part the allegations of the complaint.

[2] The General Counsel filed a motion to strike a letter appended to the Respondent's brief and certain factual assertions which, according to the General Counsel, are not a part of the record. The General Counsel's motion to strike the appended letter is granted, as the letter is not part of the record. The other matters which the General Counsel seeks to strike from the Respondent's brief are more in the nature of interpretations of the stipulation than they are additions of facts not contained in the record. We have not relied on these matters in making our decision and we find it unnecessary to strike them.

that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Stipulated Facts*

Japan is a major importer of citrus fruit grown in Florida. For several years, Florida grapefruit has been shipped to Japan from Ft. Pierce and Port Canaveral, Florida, pursuant to agreements between American exporters such as Indian River Citrus Sales (IRCS) and Japanese importers such as Sumisho Fruits and Vegetables Co. (Sumisho). The grapefruit is loaded onto Japan-bound ships by employees of American stevedoring companies and is unloaded in Japan by employees of Japanese stevedoring companies.

Coastal is the only stevedoring company operating at Ft. Pierce. It is a nonunion company. Canaveral is also a nonunion stevedoring company. It performs stevedoring services at Port Canaveral, which is operated by the Canaveral Port Authority, a state port authority which leases space to union and nonunion companies. The Respondent represents employees of certain stevedoring companies, many of which operate out of Tampa, Florida. The Respondent is engaged in a primary labor dispute with Coastal and Canaveral concerning their failure to hire employees represented by a union.

Before the 1990–1991 citrus export season,[3] the Respondent's representatives visited Japan and met with representatives of the Japanese Unions. At these meetings, the Respondent expressed concern about the fact that Japanese importers and shipping companies were using nonunion stevedores at Port Canaveral and Ft. Pierce. The Respondent requested assistance from the Japanese Unions in preventing this use of nonunion stevedores.

The Japanese Unions responded to this request for support by widely disseminating communications to stevedoring companies, citrus importers, and shipping companies, asking that they ensure that citrus fruit is loaded in Florida by stevedoring companies that hired union-represented employees. The Japanese Unions also warned that Japanese dockworkers would not unload fruit loaded in the United States by nonunion labor. Typical of these communications is a letter dated April 5, 1990, written by President Toshio Kamezaki on behalf of the Japanese dockworkers to President Gorman of Florida Transport Systems, Inc. (a nonunion stevedoring company in Ft. Lauderdale, Florida). Kamezaki refers to the fraternal relations that the Japanese Unions have had for many years with the Respondent. He sets forth the request made by the Respondent ''for our cooperation,'' and states:

> Having discussed the matter at our Executive Committee in March, we agreed never to tolerate Japanese importing firms or shipping companies to carry out activities that may lead to the destruction of ILA, and your company to reject talks with ILA on this matter. We have decided to take actions in Japanese ports in full support of ILA.

Kamezaki further states that he will communicate with citrus importers and shipping companies and ''will make them sure to never conclude contracts with stevedoring companies attempting to destroy ILA . . . and that Japanese dockworkers' [sic] unions are ready to boycott [sic] the unloading of the cargo in Japanese ports in the event that early, favorable solution should not be made.'' (S. Exh. 9.)

In a letter dated October 4, 1990, the Respondent's president, John Bowers, informed Kamezaki that the Respondent was planning to picket nonunion stevedoring companies at Ft. Pierce and Port Canaveral. He stated: ''[W]e hope to have your support in a form which will bring this matter to the attention of the Japanese people, your government and the Japanese shippers and importers who are directly and indirectly involved.'' He ended by stating, ''Your further support in denying the unloading and landing of these picketed products in your country will also be most helpful to the members of the International Longshoremen's Association and organized labor in the United States which supports our effort.'' (S. Exh. 14.)

The Japanese Unions circulated copies of the Bowers letter of October 4, 1990, to citrus importers and exporters and to shipping companies. Japanese importers such as Imperial Corporation, Tokyo, expressed concern to Florida exporters (such as IRCS) that citrus which was loaded by nonunion longshoremen in Florida would not be unloaded by Japanese dockworkers.

In late October 1990, after failing to obtain assurances that Japanese dockworkers would unload fruit loaded by nonunion stevedores, Sumisho and its carrier, Cool Carriers (Svenska) AB, directed the ship, *Bagno El Triunfo*, not to go to Ft. Pierce as scheduled but to instead go to the port of Tampa for unloading by longshoremen represented by the Respondent. By letter dated November 6, 1990, the Respondent's special consultant, Ernest Lee, told the National Council of Dockworkers' Unions of Japan that the diversion of the *Bagno El Triunfo* to Tampa was ''a direct result of your very timely and effective notices to relevant parties in Japan of your support for our efforts.'' Lee added:

> Your continued efforts on our behalf will be most appreciated. Rather than diversions, we would be pleased to see incoming vessels contracting with and employing union stevedores at Port Canaveral

[3] The season runs from approximately October or November until April or May.

> and Fort Pierce for their unloading and ours. We believe this can be accomplished. [S. Exh. 26.]

During early December 1990, Japanese importers such as Japan Produce Corp. informed various U.S. exporters, such as Gulf Stream Citrus Sales, that their ships would be loaded at Tampa instead of Port Canaveral because of concern that the Japanese Unions would otherwise refuse to unload the fruit in Japan. The Japanese Unions' threat to support the Respondent by refusing to unload the fruit that had been loaded by nonunion labor caused all the citrus shipments from Florida to Japan during the 1990–1991 export season to be shipped through the port of Tampa where they were loaded by stevedores represented by the Respondent. No ships were scheduled for Port Canaveral or Ft. Pierce during that season for the same reason.

B. *Contentions of the Parties*

The General Counsel argues that the Respondent, in furtherance of its primary dispute with Coastal and Canaveral Stevedoring, pressured participants in the Florida-Japan citrus trade, neutral to the primary dispute, by bringing about a threatened boycott by Japanese Dockworkers of any citrus fruit loaded by the primaries in Florida. The General Counsel contends that this pressure constitutes a threat within the meaning of Section 8(b)(4)(ii) for an object proscribed by subparagraph (B).[4]

The General Counsel further contends that the Respondent is responsible for the actions of the Japanese Unions under four theories of law; three are grounded in agency law and the fourth is grounded in joint-venture principles. First, the General Counsel contends that the Respondent, by its October 4, 1990 letter requesting that the Japanese Unions refuse to unload citrus fruit loaded by the primaries, authorized the Japanese Unions' subsequent threat to boycott. Second, by its letter of November 6, 1990, thanking the Japanese Unions for their actions and requesting continued assistance, the Respondent ratified those actions. Third, the General Counsel asserts that the Japanese Unions had apparent authority to act for the Respondent. Such authority was created by the Japanese Unions' dissemination of the Respondent's October 4, 1990 letter and by the Respondent's failure to stop or object to the Japanese Unions' course of conduct. Fourth, the General Counsel argues that the Respondent is responsible for the Japanese Unions' conduct because the Respondent and the Japanese Unions acted together in joint venture in pursuit of the common goal of eliminating the use of nonunion stevedores at Port Canaveral and Ft. Pierce, Florida.

Having established, to his satisfaction, that the Respondent was responsible for the conduct of the Japanese Unions, the General Counsel contends that the Board has jurisdiction over the conduct of the Japanese Unions. In this regard, the General Counsel argues that the conduct was initiated in the United States and was aimed at influencing the Respondent's primary labor dispute in the United States.

The Respondent contends that the conduct of the Japanese unions cannot be attributed to the Respondent on a theory of agency or joint venture. The Respondent asserts that there is no authority for the proposition that the Respondent's request for assistance from the Japanese Unions amounts to an authorization of the Japanese Unions to act for the Respondent. Similarly, there is no authority to support a finding that the Respondent's expression of gratitude to the Japanese Unions for assistance is a ratification of the Japanese Unions' conduct. Further, the Respondent argues that there is not even the appearance that the Japanese Unions were acting pursuant to the authority of the Respondent. Finally, the Respondent argues that its relationship with the Japanese Unions does not meet any of the defining features of joint venture such as control, proprietary interest, or sharing of profits and losses.

The Respondent also contends that the Board does not have jurisdiction over the conduct at issue here because the conduct occurred exclusively outside the territorial boundaries of the United States and was committed solely by foreign entities.

C. *Discussion*

No direct conduct by the Respondent is alleged to be unlawful in this case. All the allegedly unlawful acts were committed solely by the Japanese Unions. The initial question before us, therefore, is whether the Respondent is responsible for the conduct of the Japanese Unions. If responsibility is established and if the conduct falls within the proscriptions of Section 8(b)(4)(ii)(B), then the question remains whether the Board has jurisdiction. For the reasons set forth below, we answer each of these questions in the affirmative. The relationship between the Respondent and the Japanese Unions in this case is such that the former is responsible for the conduct of the latter. The conduct at issue is of the type proscribed by Section 8(b)(4)(ii)(B). And the Board has jurisdiction to find a violation and to prescribe a remedy for the unlawful conduct.

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[4] Sec. 8(b)(4)(ii) provides that:

> It shall be an unfair labor practice for a labor organization or its agents—to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where . . . an object thereof is—
>
> (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person . . . .

1. The Japanese Unions acted as agents of the Respondent

The Taft-Hartley amendments of 1947 expressly incorporated the common law of agency into the Act by adding the Section 2(13) definition of agency.[5] In referring to the definition, Senator Taft stated: ''This restores the law of agency as it has been developed at common law. . . . The conferees agreed that the ordinary law of agency should apply to employer and union representatives.''[6] When applied to labor relations, however, agency principles must be broadly construed in light of the legislative policies embedded in the Act:

> Transplantation of ordinary agency law, which arises out of ordinary contract and tort disputes, into the NLRA context necessarily requires sensitivity to the particular circumstances of industrial labor relations. Courts have concluded that under the NLRA, agency principles must be expansively construed, including when questions of *union* responsibility are presented.[7]

The first step in our analysis, therefore, must be an examination of ''the particular circumstances of industrial labor relations'' involved in this case. Beyond question, the Respondent attempted to cause economic pressure to be brought to bear against neutral shippers, importers, and exporters involved in the Florida-Japan citrus trade in order to further the Respondent's primary dispute with nonunion stevedoring companies in Florida. In its brief to the Board and at oral argument, the Respondent admits that it induced the Japanese Unions to engage in a secondary boycott, which boycott clearly would have been in violation of Section 8(b)(4)(ii)(B) had it been conducted by a U.S. union on U.S. territory. The particular labor relations practice at issue here, therefore, involves a classic attempt by a U.S. union to cause secondary pressure to be placed on neutral persons to force those persons to cease doing business with the U.S. employers with whom the Respondent has a primary labor dispute in the United States.

The only aspects of this case which remove it from a text-book scenario of 8(b)(4)(ii)(B) conduct is (1) the involvement of foreign entities and (2) the exertions of economic pressure outside U.S. territory. The Respondent contends that these aspects alone are sufficient to require a different result both in the application of agency principles and in the assertion of jurisdiction. We disagree.

Initially, we think it clear that if the threats at issue here had been made, at the Respondent's request, by a U.S. union in the United States, the Respondent would have been held responsible for the threats. In *Pipefitters Local 280 (Aero Plumbing Co.)*,[8] the Board found authorization and ratification of conduct in circumstances similar to those of the instant case. There, the respondent, Plumbers Local 280 (Local 280), sought an agreement which contained permissive, nonmandatory subjects of bargaining with Aero Plumbing. Aero resisted. When Local 280 discovered that Aero would be working in the jurisdiction of Plumbers Local 78 (Local 78), Local 280 told Local 78 that Aero had not signed a contract with Local 280. It told Local 78 to ''be on the lookout, maybe they could get Auckerman [part-owner of Aero] to sign the contract.''[9] Five days later, Local 78 picketed the jobsite in Local 78's jurisdiction where Aero was working. The next day the general contractor at the jobsite told Auckerman that if he did not get the pickets off the job, Aero's contract would be canceled. Two days later, Aero signed the contract with Local 280. The judge found no evidence that Local 280 authorized or ratified Local 78's picketing. The judge therefore found that Local 280 was not responsible for that picketing. The Board, however, disagreed. It noted that Local 280 informed Local 78 that Aero would be in its jurisdiction, that Aero had not signed a contract with Local 280, and that Local 78 should try to get Aero ''to sign the contract.'' In these circumstances, the Board concluded that Local 280 was responsible for Local 78's conduct.

Concededly, secondary pressure was not present in *Aero Plumbing*, supra. Instead, the issue was whether the Respondent violated Section 8(b)(1)(B) and (3) by coercing Aero into acceptance of a contract containing nonmandatory subjects of bargaining. The agency principles, however, apply with equal force to cases involving secondary boycotts. In each instance, the question is whether the respondent is responsible for the conduct of another entity. Applying the *Aero Plumbing* principles to the facts of the instant case, we would find the Respondent responsible for the threats of boycott had those threats been made by a U.S. union in the United States. The Respondent informed the unions of its dispute with nonunion stevedoring companies,

[5] Sec. 2(13) provides:

> In determining whether any person is acting as an ''agent'' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

[6] 93 Cong.Rec. 6858–59. Senator Taft explained that the definition was added expressly to avoid a Supreme Court interpretation of the Norris-LaGuardia Act which exempted organizations from liability for illegal acts committed in labor disputes unless there was proof of actual instigation, participation or ratification. *Carpenters v. U.S.* 330 U.S. 395 (1947).

[7] *Longshoremen Local 1814 v. NLRB*, 735 F.2d 1384, 1394 (D.C. Cir. 1984), cert. denied 469 U.S. 1072 (1984). See also *Machinists v. NLRB*, 311 U.S. 72, 80 (1940); *H. J. Heinz Co. v. NLRB*, 311 U.S. 514, 521 (1941).

[8] 184 NLRB 398 (1970).

[9] Id. at 398.

and requested assistance from the unions in preventing the use of nonunion stevedores. The unions granted the Respondent's request. Asserting that they were acting on behalf of and in support of the Respondent, the unions threatened various neutral shippers, importers, and exporters with the refusal to unload fruit that had been loaded by nonunion labor. In many instances a copy of the Respondent's request for assistance was enclosed with the unions' threats of boycott. The unions' threats produced results. Ships were diverted from ports using nonunion labor to Tampa, Florida, where they were loaded by stevedores represented by the Respondent. The Respondent did nothing to disavow or halt the unions' threats. To the contrary, the Respondent applauded the unions' ''timely and effective action'' and requested their continued action on the Respondent's behalf. The Respondent's conduct is virtually identical to that of the Local 280 in *Aero Plumbing* with respect to informing the other union of its difficulties with an employer, requesting certain supportive action by the other union, and taking full advantage of the benefits of the other union's action. These actions amounted to authorization and ratification of conduct in *Aero Plumbing*, supra; they clearly would amount to the same here if all the players were American and if the action had taken place in the United States.[10]

The issue, therefore, is whether the application of these principles should bring about a different result solely because the other unions are foreign entities and the threats they made occurred outside of the United States. We think not. We first address the fact that the other unions are foreign entities. In our view, the *identity* of the agent is irrelevant to the issue of agency. That is, if a union (or an employer) acts through the instrumentality of another entity, it makes no difference whether that other entity is domestic or foreign. The essential point is that the union is acting through the instrumentality of another entity. Thus, for example, if the Japanese Unions had acted (on behalf of the Respondent) inside the U.S., the Respondent would be responsible even though its instrumentality was Japanese.

We now consider the fact that the conduct here occurred in a foreign country. Notwithstanding this fact, we believe that a finding of responsibility is warranted. The parties stipulated that Japan is a major importer of citrus fruit grown in Florida. Japanese stevedores and American stevedores are linked together by the Florida-Japan citrus trade. The same fruit is loaded by the Respondent and unloaded by the Japanese Unions. The actions of one have a direct impact on the terms and conditions of employment of the other. If, for example, the Respondent's lawful dispute with the nonunion stevedoring companies resulted in disruption of the loading of fruit in Florida, the Japanese unions would feel the impact in the form of decreased work in Japan. In addition, current telecommunications place all entities involved in the Florida-Japan citrus trade in immediate contact. As Charging Party Coastal stressed at oral argument, the fax machine figured prominently in the events at issue here. Letters from Japan reached American shores in the time that it takes to place a telephone call.

In these circumstances, we see little difference between the interactions of the Respondent and the Japanese Unions here and those of one local union requesting and receiving assistance from a separate local in a different geographic area as in *Aero Plumbing*, supra. In each case, the unions are involved in the same type of work. In each case, the unions are separated geographically. In each case, the respondent requested assistance for *its* dispute and received direct benefits from the requested action. Given the trade links and rapid communications, we believe that the fact that the geographic separation in this case involves separate countries rather than separate counties is not of compelling significance in applying the principles of agency.

We further believe that policy considerations support a finding of agency here. Everything that happened in this case was initiated by the Respondent and had the sole purpose of assisting the Respondent in its primary labor dispute with nonunion companies in Florida. The Respondent concedes that the actions taken by the Japanese Unions are a classic secondary boycott. To allow the factor of geography to prevail in determining the liability for the disputed conduct would be to permit the Respondent to escape responsibility for actions it set in motion—actions of the type Congress clearly intended to proscribe with the enactment of Section 8(b)(4)(ii)(B). In an increasingly global economy, the opportunities abound for U.S. unions to initiate harmful secondary activities by unions representing employees of the foreign trade partner. Permitting U.S. unions to escape responsibility purely on geographical grounds for the economic harm they unleash subverts the purpose of the Act.

For all these reasons, we find that the Respondent authorized and ratified the disputed conduct of the Japanese Unions. We conclude that the Respondent is responsible for threats made by the Japanese Unions to neutrals involved in the Florida-Japan citrus trade that

[10] See also *Longshoremen (Shipside Packing Co.)*, 227 NLRB 659 (1976), where the Board found respondent Local 333 responsible for unlawful conduct of respondent Local 953 even though there was no evidence of Local 333's direct involvement in unlawful conduct. The Board noted that Local 333 was a direct beneficiary of the activity of Local 953, was aware of Local 953's conduct, and made no effort to discourage or disclaim the conduct. The Board concluded that ''Respondent Local 333 was aware of the activities, knew they were on behalf of the employees it represents, and, therefore, is responsible for the activities found illegal herein.'' Id. at 659 fn. 1.

fruit loaded in Florida by nonunion labor would not be unloaded in Japan.

2. The disputed conduct meets the elements of a violation of Section 8(b)(4)(ii)(B)

Having found that the Respondent is responsible for the actions of the Japanese Unions, we find those actions fall within the proscription of Section 8(b)(4)(ii)(B). The parties stipulated that an object of the Respondent's conduct was to affect a primary dispute with Coastal and Port Canaveral Stevedoring. The parties also stipulated that the importers, exporters, and shipping companies contacted by the Japanese Unions were neutral to the labor dispute between the Respondent and Coastal and Port Canaveral Stevedoring, and were persons engaged the commerce or an industry affecting commerce within the meaning of Section 8(b)(4)(ii)(B). It is undisputed that the Japanese Unions' threats to refuse to unload fruit loaded by nonunion labor in Florida constituted coercive economic pressure. The Japanese Unions, acting as agents of the Respondent, threatened a secondary boycott of the kind prohibited by the Act. We, therefore, find that the disputed conduct falls within the proscriptions of Section 8(b)(4)(ii)(B).

3. The Board has jurisdiction over the disputed conduct

The final question we address is whether the conduct attributable to the respondent is within the Board's jurisdiction. The Respondent contends that there is no jurisdiction because the events occurred outside the geographic territory of the United States and, therefore, are beyond the application of the Act. We disagree. We find that the Board has jurisdiction over conduct initiated by a U.S. union and carried out by agents of a U.S. union, which conduct has the intent and effect of embroiling neutral persons engaged in commerce in a primary labor dispute between a U.S. union and U.S. employers located within the territory of the United States.

The United States Court of Appeals for the 11th Circuit addressed the issue of jurisdiction in its decision granting the Board's petition for injunctive relief under Section 10(l) in this proceeding.[11] Although the court was making only a reasonable cause determination, we fully agree with the court's reasoning, and we find that jurisdiction lies in this case.

The court rejected the Respondent's argument that certain Supreme Court cases[12] restricted the scope of the Act to conduct occurring only within the territory of the United States. The court stated: ''The *Benz* cases do not represent generally applicable boundaries of commerce, but instead a judgment that Congress did not intend to interfere with the internal operation of foreign vessels.''[13] The court further stated that the Supreme Court's refusal to allow extraterritorial application of Title VII in *EEOC v. Arabian American Oil*, supra, ''is in fact a presumption that Congress intended to avoid 'clashes between our laws and those of other nations which could result in international discord.'''[14] (Citation omitted.)

The court then determined that several factors in the instant case support the assertion of jurisdiction:

> (1) the NLRA is here applied, as Congress intended, to protect persons in commerce from a secondary boycott, (2) the conduct was intended and had the effect of creating on unlawful secondary boycott in the United States, (3) certain significant conduct in furtherance of the secondary boycott occurred within the geographic territory of the United States, and (4) the fact that the Board is acting against a domestic labor organization subject to regulation under the NLRA.[15]

The court concluded that the threats made by the Japanese Unions were within the scope of the Act:

> Although the Supreme Court has limited the scope of the NLRA to avoid interference with the internal affairs of other nations, the Act is properly applied to the conduct of a domestic labor union which solicits a foreign union to apply pressure overseas with the intent and result of creating a secondary boycott in the United States. Further, the conduct charged in the Board's petition is not wholly extraterritorial; the letters requesting and ratifying the boycott threatened by the Japanese Unions were sent from the United States. Under these circumstances, nothing in the text or intent of the NLRA compels us to allow ILA to evade responsibility for effecting a successful secondary boycott in violation of the NLRA.[16]

We agree with the 11th Circuit's analysis. Assertion of jurisdiction in this case in no way interferes with the laws of Japan or affects the employment conditions of Japanese employees. Our remedial Order simply requires that the Respondent cease and desist from re-

[11] *Dowd v. Longshoremen ILA*, 975 F.2d 779 (11th Cir. 1992).

[12] *EEOC v. Arabian American Oil*, 499 U.S. 244 (1991); *American Radio Assn. v. Mobile S.S. Assn.*, 419 U.S. 215 (1974); *Windward Shipping Ltd. v. American Radio Assn.*, 415 U.S. 104 (1974); *McCulloch v. Sociedad Nacional*, 372 U.S. 10 (1963); and *Benz v. Compania Naviera Hidalgo*, 353 U.S. 138 (1957).

[13] *Dowd v. Longshoremen ILA*, 975 F.2d at 788.

[14] Id. at 789.

[15] Id.

[16] Id. at 791.

questing that the Japanese Unions engage in secondary boycott activities in support of the Respondent.[17]

Accordingly, we assert jurisdiction and find that the Respondent violated Section 8(b)(4)(ii)(B) of the Act.

CONCLUSION OF LAW

The Respondent, acting through the Japanese Unions, threatened, coerced, or restrained shipping agents, shipping companies, citrus exporters, citrus importers, the Canaveral Port Authority, and other persons engaged in commerce or in an industry affecting commerce, who are neutral to the dispute between the Respondent and Coastal and between the Respondent and Canaveral and other nonunion stevedoring companies operating at Port Canaveral, Florida, where an object thereof was to force or require them to cease doing business with Coastal, and with Canaveral Stevedoring and other nonunion stevedoring companies operating at Port Canaveral, Florida, and with each other, and/or to otherwise alter their business relationships related to the shipment of citrus fruit from Ft. Pierce and Port Canaveral, Florida, to Japan. The Respondent thereby engaged in unfair labor practices affecting commerce in violation of Section 8(b)(4)(ii)(B) of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, International Longshoremen's Association, AFL–CIO, its officers, agents, and representatives, shall

1. Cease and desist from requesting that the Japanese Unions or others threaten, coerce, or restrain shipping agents, shipping companies, citrus exporters, citrus importers, the Canaveral Port Authority, and other persons engaged in commerce or in an industry affecting commerce, who are neutral to the dispute between the Respondent and Coastal Stevedoring Company and between the Respondent and Port Canaveral Stevedoring, Inc. and other nonunion stevedoring companies operating at Port Canaveral, Florida, where an object thereof is to force or require them to cease doing business with Coastal Stevedoring Company and with Port Canaveral Stevedoring, Inc. and other nonunion stevedoring companies operating at Port Canaveral, Florida, and with each other, and/or to otherwise alter their business relationships related to the shipment of citrus fruit from Ft. Pierce and Port Canaveral, Florida, to Japan.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind, repudiate, and disavow in writing its letter of October 4, 1990.

(b) Post in its business offices and meeting halls copies of the attached notice marked ''Appendix.''[18] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained by it for 60 consecutive days, in conspicuous places including all places where notices to its members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Promptly after receipt of copies of the notice from the Regional Director, return signed copies for posting by Coastal Stevedoring Company, Port Canaveral Stevedoring, Inc., and other nonunion stevedoring companies operating at Port Canaveral, Florida, those parties willing, at all places where notices to their respective employees are customarily posted.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

MEMBER DEVANEY, concurring in the result.

I agree with my colleagues that in the unique circumstances of this case the Respondent, International Longshoremen's Association, AFL–CIO, is appropriately held responsible, under Section 8(b)(4)(ii)(B) of the Act, for threats made by Japanese Unions to neutral persons who are involved in the Florida-Japan citrus trade.

The prohibition against secondary boycotts in Section 8(b)(4) of the Act was drafted to protect neutral parties from illegal boycotts in their many forms and it is apparent from prior case law and the legislative history that Congress intended the prohibition against secondary boycotts to reach broadly. *Longshoremen v. Allied International*, 456 U.S. 212, 225 (1982).

There is no dispute in this case that neutral parties in the Florida-Japan citrus trade were in fact threatened. In light of the harm effected in this case, the dispositive question is whether the Respondent is responsible for that proscribed harm.

The Respondent concedes in the parties' stipulation of facts that it repeatedly invoked the aid of the Japanese Unions to threaten neutral persons doing business with nonunion stevedoring companies in the United States, with whom the ILA has a primary labor dispute. Thus, the Respondent stipulates that in the spring

[17] This is not to say that the request, standing alone, was the unfair labor practice. As explained above, the unfair labor practice was the conduct of the Japanese Unions, for which the Respondent is responsible. However, the remedy for this unfair labor practice is confined to the Order described above.

[18] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

of 1989, an ILA delegation went to Japan for meetings with several Japanese Unions to ''express its concern over Japanese and foreign importers and shipping companies directly or indirectly utilizing non-union stevedores at Port Canaveral and Fort Pierce, Florida, and requested assistance from these entities.'' The Respondent additionally stipulated that its representatives met with Japanese Unions in early 1990 and again in the spring of 1990 to request their ''cooperation with respect to the matter of the loading of citrus fruit bound for Japan at the Port of Fort Pierce and Port Canaveral, Florida.'' The ILA followed up these visits with a letter to Japanese Dockworkers President Kamezaki reiterating its request for support.

Following these requests for Japanese aid, the Japanese Unions wrote Japanese citrus importers, various shipping companies, and nonunion stevedoring companies in Florida and informed these neutrals that the Japanese Unions would take cooperative action with the ILA and boycott the unloading of citrus that was loaded in the U.S. by nonunion stevedores.

The Respondent further stipulates that by letter dated October 4, 1990, to the Japanese Dockworkers' Union, it requested their continued support and pledged to provide them with ''photographs and descriptive material which will aid in your effort.''

Upon the failure of various importers to obtain assurances that the Japanese Dockworkers would unload the Florida citrus in Japan, Japanese importers and their shipping lines directed their ship, the *Bagno El Triunfo*, to go to the port of Tampa for loading by ILA-represented longshoremen.

The Respondent stipulates that by letter dated November 6, 1990, it thanked the Japanese Unions for their help and noted that the diversion of the *Bagno El Triunfo* ''is a direct result of your very timely and effective notices to relevant parties in Japan of your support for our efforts. The Bagno El Triunfo will be handled by ILA in Tampa. Thank you.'' The Respondent further requested the continued support of the Japanese Unions. The parties stipulate that thereafter numerous ships were likewise diverted to the port of Tampa for loading by ILA-represented longshoremen.

The Respondent thus stipulates that it repeatedly invoked the aid of the Japanese Unions and sought their assistance in pressuring neutrals in the Japan-Florida citrus trade. Even though the Respondent acknowledges its conduct, it attempts to avoid legal responsibility for the conduct of the Japanese Unions on its behalf by arguing that each technical element of the law of agency is not present in this case. However, as my colleagues recognize, the principles of agency law must be applied flexibly in the context of labor relations. With this legal analysis as a backdrop, I believe that the General Counsel has established a causal link between the ILA's invocation of action and the Japanese Unions' heeding that call to hold the ILA responsible under the National Labor Relations Act.

Accordingly, under these particular circumstances, where the Respondent concedes and stipulates that it successfully sought the Japanese Unions' agreement to engage on its behalf in secondary boycott conduct which the Act proscribes, I agree with my colleagues that the Respondent is responsible for that conduct and that it violated Section 8(b)(4)(ii)(B) of the Act.

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT request that the Japanese Unions or others threaten, coerce, or restrain shipping agents, shipping companies, citrus exporters, citrus importers, the Canaveral Port Authority, and other persons engaged in commerce or in an industry affecting commerce, who are neutral to the dispute between us and Coastal Stevedoring Company and between us and Port Canaveral Stevedoring, Inc. and other nonunion stevedoring companies operating at Port Canaveral, Florida, where an object thereof is to force or require them to cease doing business with Coastal Stevedoring Company and with Port Canaveral Stevedoring, Inc. and other nonunion stevedoring companies operating at Port Canaveral, Florida, and with each other, and/or to otherwise alter their business relationships related to the shipment of citrus fruit from Ft. Pierce and Port Canaveral, Florida, to Japan.

WE WILL rescind, repudiate, and disavow in writing our letter of October 4, 1990.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL–CIO